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January 31, 2006

VIA HAND-DELIVERY

Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Attn: Roy Q. Luckett, Esq.

RE: MUR 5634 – Sierra Club, Inc.

Dear Mr. Luckett:

Enclosed for filing are three copies of the Response of the Sierra Club, Inc. to the General Counsel's Brief in MUR 5634.

Please contact the undersigned at (202) 328-1666 if you have any questions.

Very truly yours,

B. Holly Schadler

B. Holly Schadler
Counsel to Respondent

Enclosures

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Before the Federal Election Commission

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In the Matter of the

Sierra Club, Inc.,

Respondent

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MUR 5643

**Response of the Sierra Club, Inc. to
General Counsel's Brief**

The Sierra Club, Inc. ("Sierra Club") submits this response to the General Counsel's Brief recommending that the Commission find probable cause that the Sierra Club violated 2 U.S.C. §441b(a) by making a prohibited corporate expenditure for a 2004 voter guide entitled "Let Your Conscience Be Your Guide."¹

**I. THE MESSAGE IN THE "CONSCIENCE" VOTER GUIDE DOES NOT
CONSTITUTE EXPRESS ADVOCACY.**

The General Counsel's Brief (or "GC Brief") contends that the "Conscience" voter guide constitutes express advocacy under both prongs of the definition set forth at 11 C.F.R. §100.22(a)-(b). General Counsel's reliance on the first prong of this definition - the "magic words" standard - is wrong as a matter of fact. And, his reliance on the second prong is erroneous as a matter of both fact and law.

¹ the Sierra Club stated that it was reimbursed for the costs of the voter guide by the Sierra Club Environmental Voter Education Campaign ("EVEC") EVEC is the name that the Sierra Club has used internally and externally for many years to refer to its separate segregated fund registered with the Internal Revenue Service. The precise name of the fund on the IRS Form 8871 is Sierra Club Voter Education Fund. The expense for the preparation of the voter guide is reflected (as of the date it was incurred) within a larger disbursement to Malchow, Schlackman, Hoppey & Cooper on the 2004 Pre-election report (Form 8872)

A. The “Conscience” Voter Guide Does Not Contain Express Advocacy as Defined In the First Prong of the Commission’s Regulation.

General Counsel’s attempt to wedge the Sierra Club voter guide into the magic words standard of express advocacy set forth in the first prong of the Commission’s regulation is futile. Under this regulation, the term “expressly advocating” means , *inter alia*, any communication that uses phrases such as “vote for,” “re-elect,” “support,” or “cast your ballot for,” “Smith for Congress,” or “Bill McKay in ‘94,” “vote against,” “defeat,” “reject the incumbent.” 11 C.F.R. §100.22(a). The “Conscience” voter guide does not contain any of these phrases, and General Counsel does not appear to contend that it does.

“[E]xpressly advocating” also includes the use of phrases such as “vote Pro-Life” or “vote Pro-Choice,” but only when such phrases are “accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice.” *Id.* Under this element of the standard, a communication must expressly ask the public to “vote for” a group of candidates who support a particular position and it must then clearly identify which of the candidates support this position. General Counsel appears to argue that two phrases in the voter guide meet this standard, although it is not clear whether he means taken alone or together. The first of these phrases, “Let Your Vote Be Your Voice,” does not urge a vote for any candidate or group of candidates; at most it merely states the obvious fact that voting is a way of expressing one’s views. Similarly, the second phrase, “Let Your Conscience Be Your Guide,” does not urge readers to “vote for” anyone. It again states the obvious that people should think before they act.

Even assuming *arguendo* that the voter guide uses “checkmark symbols” to identify candidates who are pro-environment, as General Counsel contends, the voter guide still does not contain any language which expressly urges voters to “vote for” specific candidates. And, the

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checkmarks themselves are not a substitute for the words. To constitute express advocacy a communication must “literally include words which in and of themselves advocate the election or defeat of a candidate.” *FEC v. Christian Action Network*, 110 F.3d 1049, 1051 (4th Cir. 1997) (emphasis added) (“*CAN I*”). Symbols, particularly those that are not accompanied by any explanation of their significance as presented in this matter, are susceptible to varied interpretations and cannot rise to the level of the “magic words” required for express advocacy. In *FEC v. Christian Action Network*, the court rejected the FEC’s position that symbols were “sufficiently explicit” to constitute express advocacy. 894 F. Supp. 946, 956 (W.D. Va. 1995) (“The court is not aware of any universally accepted symbol that unambiguously indicates ‘vote for’ or ‘vote against’ a particular candidate.”), *aff’d*, 92 F.3d 1178 (1996) (“*CAN I*”).²

Similarly, the fact that the voter guide also contains “scenic photographs of nature,” as General Counsel argues, cannot change the meaning of the explicit words in the guide. *See CAN II*, 110 F.3d 1049, 1050 n.1 (“[T]he district court repeatedly emphasized that it ‘[could not] accept the FEC’s invitation to delve into the meaning behind the image. To expand the express advocacy standard enunciated in *Buckley* in this manner would be to render the standard meaningless.’”) (quoting *CAN I*, 894 F. Supp. at 958). It is unclear how the Sierra Club or any other regulated entity could possibly distinguish between those images that are express advocacy and those that are not.³

² The court rejected the FEC’s contention that the international stop signal superimposed over a candidate’s picture, a far less ambiguous symbol than checkmarks, would constitute express advocacy because it “might communicate several different messages to the viewer besides voting against the candidate.” 894 F. Supp. at 958

³ As discussed in more detail in footnote 18 of this brief, the 2004 guide in issue here lacks the characteristics that apparently led the non-controlling group of Commissioners to find express advocacy with respect to the Sierra Club’s 2000 voter guide on which the Commission took no action. *See* MUR 5154. The controlling group of Commissioners found the 2000 guide “lacks an explicit directive as required by the court precedents.” *See* Statement of Reasons of Vice Chairman Bradley A. Smith, Commissioners David M. Mason and Michael E. Toner at 2

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For similar reasons, the General Counsel's reliance on the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("MCFL"), from which this element of the regulation is derived, is wholly misplaced and inaccurate. After restating the magic words test it articulated in *Buckley v. Valeo*, 424 U.S. 1 (1976) ("Buckley"), the Court in *MCFL* stated that the publication in issue "not only urges voters to vote for 'pro-life' candidates, but also identifies and provides photographs of specific candidates fitting that description." *Id.* at 249. The Sierra Club voter guide, in contrast, does not expressly (and certainly does not "unmistakably" as the Court required) ask voters to vote "pro-environment"; it merely encourages them to rely on their own conscience's when they do vote and get the facts about the candidates.⁴

Finally, the first prong of the Commission's express advocacy definition includes "communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!" 11 C.F.R. §100.22(a). As we demonstrate more fully in point B with respect to the second prong of the Commission's express advocacy

⁴ *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999), the other decision on which General Counsel relies in this portion of his argument, dictates against a finding of express advocacy in this case. After surveying the existing case law defining express advocacy, including decisions that rely on the context of a communication, the court concluded that "the only predicate factual determinations" for finding express advocacy are "the identification of the speaker and the communication's contents," *id.* at 62, a standard that precludes the regulation's reliance on context. Using this standard, the court found that a speech given by Ralph Reed did not constitute express advocacy because it was "descriptive rather than prescriptive" when it mentioned efforts to "knock off" a particular candidate and it was "prophecy rather than advocacy" when it stated that pro-family advocates "were going to see [the candidate] sent bags packing in November of this year." *Id.* at 63. The use of such terms, the court found, may have sent an "implicit message" which was "unmistakable," but they required "one inferential step too many to be unequivocally considered an explicit directive." *Id.* Similarly, the court refused to penalize as express advocacy a mailing which referred to the upcoming election for Congress, urged Christian voters "to make our voices heard," and referred to a legislative "scorecard" which rated incumbents as favorable or unfavorable to Christian values. *Id.* at 64. The mailing, the court concluded, could be understood as a directive to engage in issue advocacy with all candidates in the election. *Id.*

regulation, this element of the definition is invalid as a matter of law because it goes beyond the magic words formula, mandated by the Supreme Court in *Buckley* and *MCFL* and most recently reaffirmed in *McConnell v. FEC*, 540 U.S. 93 (2003) ("*McConnell*") which relies entirely on the words of a communication, not its "context." Moreover, the precise scope of this element of the definition has never been clear,⁵ since it cannot be the case that merely referring to a candidate or candidate committee by itself constitutes express advocacy. Whatever the meaning and scope of this element, however, it cannot be applied here where the words of the voter guide at most urged voters to cast votes based on "conscience," not on the basis of the Sierra Club's position or even on the basis of a candidate's environmental record.

B. General Counsel's Reliance on 11 C.F.R. §100.22(b) Is Barred by the Supreme Court's Decision in *McConnell*, which Makes Clear that FECA's Prohibition on "Express Advocacy" Is Limited to Communications that Include So-Called Magic Words.

Apparently recognizing that his reliance on the first prong of the express advocacy regulation has serious flaws, General Counsel attempts to resurrect the discredited second prong of the definition which includes communications that do not contain the express words of advocacy required in the first prong. See 11 C.F.R. §100.22(b). This argument must also fail, however, because (1) the second prong of the definition is inconsistent with the definition of express advocacy first established in *Buckley*, and most recently affirmed by the Supreme Court in *McConnell*; (2) the second prong of the definition is unconstitutionally vague; and (3) even if the definition is not invalid as a matter of statutory interpretation or constitutional law, the Sierra

⁵ The Commission did not define the scope of this element of the first prong of the definition or how it differs from the second prong, which also relies on the context of a communication, when it adopted the current definition of express advocacy. See Final Rule, "Express Advocacy, Independent Expenditures, Corporate and Labor Organization Expenditures," 60 Fed. Reg. 35292 (July 6, 1995). Commission decisions since 1995 have similarly failed to explicate the meaning of this part of the regulation.

Club's voter guide does not fall within it.

1. The Second Prong of the Commission's Definition of Express Advocacy Is Inconsistent with the Meaning of that Term As Interpreted by the Supreme Court.

In *Buckley*, the Supreme Court construed FECA's limitation on expenditures "relative to a clearly identified candidate" as applying "only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," 424 U.S. at 44, which phrase was in turn defined as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id.* at 44 n.52. *See id.* at 80 n.108 (applying same test to FECA §434(e)). In *MCFL*, the Supreme Court reiterated, in the context of 2 U.S.C. §441b, that "a finding of 'express advocacy' depended upon the use of language such as 'vote for,' 'elect,' 'support,' etc." 479 U.S. at 249.

Relying on *Buckley* and *MCFL*, three federal courts have held that the second prong of the Commission's definition of express advocacy is unconstitutional. *See Virginia Society for Human Life v FEC*, 263 F.3d 379, 391-92 (4th Cir. 2001); *Right to Life of Dutchess County, Inc. v. FEC*, 6 F. Supp. 2d 248 (S.D.N.Y. 1998); *Maine Right to Life Comm., Inc. v. FEC*, 914 F. Supp. 8, 12 (D. Me.), *aff'd*, 98 F.3d 1 (1st Cir. 1996). The General Counsel's Brief argues that these decisions were wrongly decided in light of the Supreme Court's decision in *McConnell* upholding the prohibition under the Bipartisan Campaign Reform Act ("BCRA") on corporate and union electioneering communications against a First Amendment challenge. *See GC Brief* at 9-10. But, this argument misses the essential relevance of *McConnell* as it pertains to the issues here: even as the Court was upholding BCRA's ban on electioneering communications, it unequivocally reaffirmed its prior holdings in *Buckley* and *MCFL* that as "an endpoint of statutory

interpretation,” 540 U.S. at 190, the term “express advocacy” includes only communications that contain the so-called “magic words” set forth in *Buckley*. As the Court stated in *McConnell*, “[in *Buckley*] [w]e provided examples of words of express advocacy, such as ‘vote for,’ ‘elect,’ ‘support,’ ... ‘defeat,’ [and] ‘reject,’ ... *and those examples eventually gave rise to what is now known as the ‘magic words’ requirement.*” *Id.* at 191 (internal quotation marks and citations omitted; emphasis added).

The Court’s repeated equation of “express advocacy” and “magic words”⁶ cannot be attributed to a misunderstanding of the current state of the law. Throughout the *McConnell* litigation, both the Commission and the intervenor-defendants consistently relied on the “magic words” definition of “express advocacy” as a basis for demonstrating that FECA’s prohibition on corporate and union expenditures was filled with loopholes prior to BCRA.⁷ And, it was this same understanding that provided the *McConnell* Court with its rationale for upholding BCRA’s provision on electioneering communications.⁸ As the Court noted, “the unmistakable lesson from

⁶ We have counted at least 13 instances in which the majority in *McConnell* equated the term “express advocacy” with the magic words test. See 540 U.S. at 126 (2 references), 127 (2 references), 190 (2 references), 192, 193 (2 references); 193-194, 216-217, 217, 219. The dissenting opinions in *McConnell* similarly used “express advocacy” to mean communications that contain magic words. See 540 U.S. at 281 and 322.

⁷ See, e.g., Brief for the Federal Election Commission, Et. Al (Final Version) at 15, 79, 80, 81, 82, 83, 90, 96, 102, *McConnell v. FEC*, 540 U.S. 93 (2003) (Nos. 02-1674, et al.), Brief for the Intervenor Defendants at 4, 6, 9, 44, 53, *McConnell v. FEC*, 540 U.S. 93 (Nos. 02-1674 et al.).

⁸ The General Counsel states that the Supreme Court in *McConnell* “discussed express advocacy principally to afford context in evaluating the constitutionality of an alternative standard for determining when communications are intended to influence voters’ decisions and have that effect . . . the Court did [not] purport to determine the precise contours of express advocacy to any greater degree than did the Court in *Buckley v. Valeo* . . .” See GC Brief at 9 n 4. This analysis ignores the Court’s repeated emphasis on the magic words standard, see *supra* n 5, to demonstrate that the express advocacy standard could easily be averted, a fact which was central to the Court upholding Congress’ decision to prohibit electioneering communications. The Court’s understanding of the meaning of express advocacy was not only based on the great weight of judicial authority at the time, but it was consistent with Congress’s own understanding of the meaning of express advocacy when it enacted BCRA. See, e.g., *Bipartisan Campaign Reform Act of 2001: Committee on House Administration, Adverse Report*, H.R. Rep. No. 107-131, pt. 1, at 50 (2001) (“Both political parties, as well as a wide range of interest groups and entities whose origin and purpose remain largely a mystery, have exploited issue advocacy in recent elections to run ads that clearly are designed to advocate the

the record in this litigation, as all three-judges on the District Court agreed, is that *Buckley's* magic words requirement is 'functionally meaningless'... 'Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted.' 540 U.S. at 193.

Having persuaded the Supreme Court that Congress properly enacted BCRA's prohibition on electioneering communications in order "to correct the flaws it found in the [magic words] system," *id.* at 194, the Commission may not now contend that those flaws never existed at all because the statutory test for express advocacy went beyond magic words. As the Court in *McConnell* held, "the concept of express advocacy and the concomitant class of magic words," *id.* at 192, are "the product of statutory interpretation," *id.*, and that interpretation "is firmly embedded in our law." *Id.* at 203. It is Congress alone, therefore, that can change this interpretation.⁹ When faced with the "flaws" in the magic words standard of express advocacy,

election or defeat of specific federal candidate, but evade federal election regulation by avoiding the 'magic words'"), Statement of Senator Olympia Snowe, 148 Cong Rec S2135 (daily ed Mar 20, 2002) ("Why is this [lack of disclosure] so? Because they don't contain the so-called 'magic words' like 'vote for' candidate x or 'vote against candidate x' that make a communication what is called 'express advocacy,' and therefore, subject to Federal law requiring disclosure and requiring that the ad be paid for with hard money"), Statement of Senator James Jeffords, 148 Cong Rec S2117 (daily ed Mar 20, 2002) ("I am especially proud of the provisions in this legislation that reform the law concerning broadcast advertisements near an election that escape even minimal disclosure by not using the 'magic words'"), Statement of Senator John McCain, 148 Cong Rec S2141 (daily ed. Mar 20, 2002) ("The Snowe-Jeffords electioneering communications provisions will help restore the original intent of the law; to keep a tidal wave of union and corporate money out of Federal elections. [Parties and outside groups] evade campaign finance laws prohibiting the use of soft money on campaign ads by studiously avoiding the use of the so-called 'magic words' of 'vote for' or 'vote against' in such ads"), Statement of Senator Russell Feingold, 147 Cong Rec S3070 (daily ed Mar 29, 2001) ("Snowe-Jeffords gets at the heart of the issue ad loophole. They advocate for the election or defeat of a candidate, even though they don't say those 'magic words,' such as 'vote for,' 'vote against,' 'elect' or 'defeat' These ads might side-step the law, Mr President, but they certainly don't fool the public.")

⁹ At least two state election agencies have ruled, since *McConnell*, that in the absence of new legislation they have no authority to change the definition of express advocacy under state law to include more than magic words. See Michigan Department of State, Declaratory Ruling dated April 20, 2004 (issued to Michigan Chamber of Commerce). See also Florida Department of State, Division of Elections, Opinion 05-06 (September 21, 2005) (except for "electioneering communications, as defined in 2004 legislation, express advocacy is limited to magic words")

however, Congress did not expand that definition, as it could have, but instead chose to prohibit a new category of prohibited expenditures known as electioneering communications.¹⁰ Outside of the category of electioneering communications, Congress left untouched the longstanding understanding of express advocacy as meaning magic words, and the Commission must accept that decision.¹¹

2. The Second Prong of the Commission's Definition Is Unconstitutionally Vague.

Because the second prong of the Commission's regulation is inconsistent with the meaning of express advocacy as construed in *Buckley* and *MCFL* and confirmed in *McConnell*, it is not necessary to reach the question of whether the second prong is unconstitutionally vague. However, as General Counsel apparently recognizes, if, contrary to Congress's understanding and the Supreme Court's interpretation, the Commission nevertheless construes "express advocacy" to mean more than magic words, it must do so in a manner which gives adequate notice to the regulated community of what is prohibited and what is not.

Insofar as the Supreme Court adopted the express advocacy test as a way of narrowing the broad statutory definition of "expenditure," see *McConnell*, 540 U.S. at 192, the Court's intent will not be served unless the meaning of "express advocacy" itself is clear and unambiguous. The second prong of the Commission's definition fails to give adequate notice to individuals and

¹⁰ This understanding of *McConnell* is buttressed by the fact that the Court upheld the definition of electioneering communications only after finding that it was not vague 540 U.S. at 194. By insisting upon a clear definition of electioneering communications, the Court reinforced its earlier decision construing express advocacy in the narrowest of terms. Moreover, the finding in *McConnell* that the "magic words" test may be easily avoided does not undermine its continuing validity until Congress chooses to change the test.

¹¹ The Commission itself recently recognized this point in its merits brief in *Wisconsin Right To Life, Inc. v. FEC* where it stated: "BCRA did not alter the application of the 'express advocacy' standard to corporate and union disbursements for non-broadcast communications during those pre-election periods, or to any communication made outside the temporal and geographic limits incorporated into the definition of 'electioneering communication.'" Brief for the Appellee at 6 n.1. As we have shown, the standard of express advocacy which had been universally recognized prior to BCRA was the "magic words" test.

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organizations in several respects. First, with the exception of the timing of a communication, the regulation fails to specify any of the “external events” which may be relied upon to show that a communication constitutes express advocacy. Since the number of such external events is limitless, political speakers have no way of determining in advance how the Commission may respond to a specific communication. Second, in relying on how a communication will be “interpreted by a reasonable person,”¹² rather than on the meaning of its words, the second prong puts a speaker “wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.” *Buckley*, 424 U.S. at 43, quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945). Third, the “electoral portion” of a communication, whose meaning under the regulation must be unmistakable, unambiguous and suggestive of only one meaning, *see* 11 C.F.R. §100.22(b)(1), is nowhere defined and leaves speakers and enforcers guessing as to what is allowed and what is not.¹³ Given these uncertainties, a number of courts have ruled that the second prong of the regulation, or the judicial version of that test (*FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987)), is unconstitutionally vague. *See Governor Gray Davis Committee v. American Taxpayers Alliance*, 102 Cal. App. 4th 449 (2002) (rejecting *Furgatch* test in part on vagueness grounds); *Chamber of Commerce v. Moore*,

¹² The Court of Appeals for the Fourth Circuit considered this aspect of the second prong when it held the regulation unconstitutional. *See Virginia Society For Human Life*, 263 F.3d at 391-92 (4th Cir. 2001) (“[11 C.F.R. §100.22(b)] thus shifts the focus of the express advocacy determination away from the words themselves to the overall impressions of the hypothetical, reasonable listener or viewer. This is precisely what *Buckley* warned against and prohibited”), *id.* at 392 (“11 C.F.R. § 100.22(b) defines express advocacy with reference to the reasonable listener’s or reader’s overall impression of the communication. That is prohibited by *Buckley* and *MCFL*.”), *see also CAN II*, 110 F.3d at 1057 (noting that the Supreme Court in *Buckley* “warned of the constitutional pitfalls in subjecting a speaker’s message to the unpredictability of audience interpretation.”)

¹³ General Counsel’s reliance on the Supreme Court’s decision in *McConnell* upholding BCRA’s so-called “PASO” standard, *see* GC Brief at 10, is also misplaced. “PASO” does not rely on undetermined factors external to a communication nor does it depend upon a reasonable person’s understanding of the communication. Furthermore, the Court upheld the PASO standard only in the context of a prohibition on the actions of political party committees, which, the Court stated, “are presumed to be in connection with election campaigns.” 540 U.S. at 170 n.64.

288 F.3d 187, 194 (5th Cir. 2002) (“We agree that the Furgatch test is too vague”); *Virginia Society For Human Life*, 263 F.3d at 391-92 (relying on vagueness of second prong as basis for finding it unconstitutional).

Finally, the fact that the Commission did not find violations with respect to three other communications distributed by the Sierra Club in connection with the 2004 election, does not demonstrate the clarity and reasonableness of the Commission’s definition, as General Counsel argues, but instead demonstrates the vague and arbitrary nature of the Commission’s regulation. General Counsel states that under the current regulation “corporations are in fact able to publish meaningful voter guides, *even ones showing preferences for particular candidates’ records*, without crossing the line into express advocacy.” GC Brief at 11 (emphasis added). However, he never explains where “the line into express advocacy” is to be drawn under the regulation, nor does he explain how the impermissible “preferences for particular candidates’ records” in the “Conscience” voter guide exceeds the apparently permissible preferences suggested in the Sierra Club’s other communications.¹⁴ Applying a “smell test” to determine the lawfulness of political communications is not constitutionally adequate or permissible.

3. The “Conscience” Voter Guide Does Not Fall Within The Second Prong of the Commission’s Definition of Express Advocacy.

Assuming *arguendo* that the Commission may apply the second prong of the express advocacy definition after *McConnell*, and further assuming that the second prong is constitutional,

¹⁴ Copies of the Sierra Club communications at issue in the Complaint are attached as Exhibit A to this Response. The only difference we can discern between “Conscience” and the others is that the former included checkmarks while the others do not. If this is the basis on which the Commission acted at the reason to believe stage, it has never said so. Moreover, we are aware of no guidance from the Commission making it clear that the use of checkmarks, without any explanation of what they connote, is dispositive of whether a vote guide is unlawful. Finally, there is no discernable standard that could be gleaned from this analysis for the regulated community to follow.

there is no basis for concluding that the Sierra Club's "Conscience" voter guide falls within that standard based on the two "external" factors on which the General Counsel relies.¹⁵ First, although the GC Brief correctly notes that the voter guide was distributed before the November 2, 2004 election, this fact alone cannot be dispositive of whether a communication contains express advocacy or every voter guide distributed before a federal election would be unlawful. This is not the Commission's position, *see, e.g.*, 11 C.F.R. §114.4(b)(5), nor does it serve to distinguish the "Conscience" guide from other communications distributed by the Sierra Club before the 2004 election for which the Commission did not even find reason-to-believe existed. The fact that the Sierra Club distributed its guide before the 2004 election is simply another way of saying that its purpose was to educate voters about the candidate's positions on important issues; it does not demonstrate that the voter guide constitutes express advocacy.

Second, General Counsel's reliance on "the Sierra Club's well-known stance supporting legislation aimed at protecting the environment" is equally misplaced. Potential voters who are not Sierra Club members¹⁶ may not have any understanding of the organization's positions concerning the specific legislative measures discussed in the voter guide, assuming that they have even heard of the organization and know that it generally aims to protect the environment. Furthermore the checkmarks placed under certain of the candidates' names do not "unmistakably"

¹⁵ The Sierra Club voter guide focused entirely on legislative issues, not on the character, qualifications or accomplishments of the candidate. This case is, therefore, distinguishable on the merits from the Commission's decision in MUR 5024R applying the second prong of the express advocacy definition to communications by the Council for Responsible Government for which there was "not even a pretense that the brochures are about anything other than Kean's fitness for Federal office" Factual and Legal Analysis, MUR 5024R at 15 (April 13, 2005).

¹⁶ Members of the organization who received the voter guide in the mail are the most likely to be familiar with the organization's positions. However, to the extent that the voter guide reached such members, it is irrelevant whether it contained express advocacy. *See* 11 C.F.R. §114.3(a) (corporation may make communications to its restricted class on any subject, including express advocacy). General Counsel's argument must, therefore, depend upon the understanding of those voters who are not members of the organization.

convey the organization's preferred position on such issues, since a checkmark, far more than a plus/minus sign or a thumb-up/thumb-down symbol may equally connote support for *or* opposition to the position taken by the candidate.¹⁷ As the courts held in *CAN I* and *CAN II*, *see supra* text accompanying note 2, symbols are subject to such varied interpretations, and even the clearest of symbols cannot constitute express advocacy.

General Counsel apparently recognizes this fact when he states, "We are mindful that one could argue the 'reasonable mind' of a voter opposing proposed environmental legislation or favoring looser environmental regulation could regard the words [in the voter guide], *with the accompanying voting records and checkmarks*, as encouragement to vote for President Bush and Mel Martinez," rather than the Sierra Club's supposed preferred candidates, Senator Kerry and Betty Castor. GC Brief at 6 (emphasis added). General Counsel attempts to get past this hurdle by suggesting that even in such a case, "the action encouraged is voting in a particular way," *see id.*, but this misses the point entirely. In order to constitute express advocacy, a communication must expressly advocate the election or defeat of a candidate who is "clearly identified" in the communication. If a communication can reasonably be read by some voters as supporting (or opposing) one candidate and by other voters as supporting (or opposing) the other candidate, the "electoral portion" of the communication is not "unmistakable, unambiguous, and suggestive of *only one meaning*." 11 C.F.R. §100.22(b)(1) (emphasis added). General Counsel's effort to come under the discredited, and invalid, second prong of the Commission's express advocacy definition must therefore fail.

¹⁷ General Counsel states that in reaching the conclusion that the 2004 Sierra Club voter guide was express advocacy he also "considered" the Commission's previous decision in MUR 5154 regarding a voter guide distributed by the Sierra Club in connection with the 2000 election. Putting aside that the Commission failed to find a violation in that case by a 3-3 vote, General Counsel does not even acknowledge the many significant ways in which the voter guide in this case differs from the 2000 voter guide. *See infra* note 18.

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II. THE COMMISSION MAY NOT TAKE ACTION AGAINST THE SIERRA CLUB BECAUSE OF THE ABSENCE OF FAIR NOTICE OF THE COMMISSION'S POSITION REGARDING THE DEFINITION OF "EXPRESS ADVOCACY" IN THE WAKE OF *McCONNELL*.

In point I, we discussed the legal issues raised in the General Counsel's Brief on their face and as if they are presented here in a vacuum. In fact, however, there is an important history to this proceeding which bears heavily on whether the Commission may take action against the Sierra Club.

On October 21, 2003 the Commission failed by a 3-3 vote to find that the Sierra Club had violated section 441b when it distributed a voter guide in connection with the 2000 election for U.S. Senate in Virginia. *See* MUR 5154. In their Statement of Reasons issued on December 6, 2003, the controlling group of Commissioners who voted against finding a violation concluded that there was no express advocacy under the first prong of the Commission's regulation and that the second prong should not be enforced because it had been declared unconstitutional by several federal courts and, in any event, was inconsistent with the great weight of authority defining express advocacy to include only communications with magic words. *See* Statement of Reasons of Vice Chairman Bradley A. Smith, Commissioners David M. Mason and Michael E. Toner, MUR 5154 at 2. The non-controlling group of Commissioners who voted to find a violation issued a Statement of Reasons on December 16, 2003 covering both the Sierra Club case and two other MURs. *See* Statement of Reasons of Chair Ellen L. Weintraub, Commissioners Scott E. Thomas and Danny Lee McDonald in MURs 5024, 5154 and 5146. The non-controlling group of Commissioners noted that the Sierra Club voter guide presented "a closer call" than the facts in MUR 5024, but nevertheless found that it contained express advocacy under the first prong of the Commission's regulation, citing specifically the use of checks and thumbs down symbols to

identify the candidate whose environmental views were most consistent with those of the Sierra Club¹⁸ and the guide's comparison of the candidates' overall voting records on environmental issues. Thus, as of the middle of December, 2003, the regulated community in general and the Sierra Club in particular was on notice that a voter guide having the characteristics of the Sierra Club's 2000 voter guide would *not* be subject to an enforcement action under either prong of the express advocacy definition.

Although the 2000 Sierra Club case was decided before the Supreme Court decision in *McConnell*,¹⁹ the controlling group of Commissioners who had voted not to find a violation in the Sierra Club case continued to maintain the same position following *McConnell*.²⁰ Furthermore, the Commission's public position regarding the meaning of express advocacy remained in limbo throughout the months leading up to the 2004 election²¹ as the agency defended the civil action

¹⁸ A copy of the 2000 voter guide which was the subject of MUR 5154 is attached as Exhibit B to this Response. The 2000 guide expressly stated that a checkmark indicates that the candidate "Supports Sierra Club Position," and that a thumbs-down symbol indicates that the candidate "Opposes Sierra Club Position." In contrast, the 2004 voter guide in issue here does not use a thumbs-down symbol at all, does not state in any manner the significance of a check mark, and provides no overall percentage rating of the candidates. As we have discussed earlier, the Commission's prior attempts to rely on symbols to establish express advocacy have failed. See *supra* text accompanying note 2.

¹⁹ Although the non-controlling group of Commissioners issued its Statement of Reasons on December 16, 2003, less than a week after the Supreme Court announced its decision in *McConnell v. FEC*, the Statement referred to the Court's decision only in passing.

²⁰ See Statement of Reasons of Chairman Bradley A. Smith and Commissioners David M. Mason and Michael E. Toner, MUR 5024 (Jan. 13, 2004). Although it is unclear when this Statement became public, it was referred to in the litigation that followed the Commission's dismissal. See Kean Committee Amended Complaint (April 22, 2004) and Kean Committee Motion for Summary Judgment (May 19, 2004). Similarly, in MUR 5089, the Commission did not find express advocacy by the same split vote. See Statement of Reasons, Vice Chair Ellen Weintraub, Commissioners Danny L. McDonald and Scott E. Thomas, MUR 5089 (April 2, 2004).

²¹ Other circumstances added to the lack of clarity in the regulated community during 2004 concerning the Commission's policy regarding express advocacy, especially the status of the second prong of the Commission's definition. First, while General Counsel argues that the decision in *McConnell* undercuts the rationale of the three previous federal court decisions invalidating the second prong of the regulation, the Commission never took steps to set aside the injunctions in those cases based on the Supreme Court's decision, as is commonplace in other cases limiting administrative enforcement programs after a contrary decision by the Supreme Court. If a majority of the Commission believed that these decisions were no longer good law, it would have been expected to move to set the

brought against it by the Kean for Congress Committee, the unsuccessful complainant in one of the other express advocacy cases decided by the same split vote. *See Kean For Congress Committee v. FEC*, C.A. No. 1:04CV00007 (JDB) (D.D.C. 2005).²² Except for an oblique reference to the second prong of the definition in a single Advisory Opinion,²³ the Commission gave no public indication that it might be reconsidering its position concerning enforcement of the second prong of the definition until February 7, 2005, three months after the 2004 election, when it moved to remand the *Kean* case for further agency proceedings. The Commission's ultimate determination to find reason-to-believe in the remanded proceeding under both prongs of the definition was not made public until November or December, 2005, when the Conciliation

injunctions aside as soon as practicable in order to remove this hurdle to its enforcement program and to make clear its views on this question. Second, in Advisory Opinion 2003-37, a highly publicized and controversial decision issued on February 19, 2004, the Commission determined that certain communications did not contain express advocacy without any reference to the second prong of the Commission's regulation. In response to numerous comments submitted in response to a discussion draft of the Opinion, the Commission ultimately made clear in the final Advisory Opinion that references to the "PASO" standard in the Opinion were limited to political committees registered under FECA and not to tax exempt corporations such as the Sierra Club. Third, in its Notice of Proposed Rulemaking on "Political Committee Status," 69 Fed. Reg. 11737 (March 11, 2004), the Commission sought comment on whether it could, in light of *McConnell*, expand the definition of express advocacy to include "additional activities," including using a "PASO" standard to define express advocacy. The Commission ultimately decided not to take any of these steps, however. In view of these developments, as well as the developments described above in the text, Commission-watchers were understandably uncertain throughout 2004 regarding the Commission's enforcement position concerning alleged express advocacy. While the Commission may have finally reached a consensus on these issues in 2005 in response to the *Kean* litigation, it is unreasonable to have expected organizations such as the Sierra Club to have anticipated this change many months before it occurred and was announced to the public.

²² The Kean Committee argued in its amended complaint filed March 4, 2004 and motion for summary judgment filed May 19, 2004 that the Commission should have applied the second prong of the express advocacy definition in determining whether the communication in issue contained express advocacy. The Commission never responded to these arguments until early 2005, after the district court refused to dismiss the case for lack of standing.

²³ Advisory Opinion 2004-33 found an absence of express advocacy under both prongs of the definition. This Advisory Opinion was made public on September 10, 2004 and, in any event, it hardly stands as a clear pronouncement of the Commission's position on whether a communication that does not violate the first prong of the definition may still be found liable under the second prong. The lack of controlling guidance in this Advisory Opinion was made clear by the Commission in its motion to remand in the *Kean* case, where it took the position that the impact of *McConnell* had not yet been resolved by the Commission and that any argument by the General Counsel concerning the Supreme Court's decision might not reflect the views of a majority of the Commission itself. *See Defendant Federal Election Commission's Memorandum In Support of Its Motion For A Voluntary Remand*, 7, *Kean For Congress Committee v. FEC*, No. 1:04CV00007 (JDB) (Feb. 7, 2005).

Agreement with the Council for Responsible Government was released to the public along with the Factual and Legal Analysis for the earlier reason to believe finding in that case.²⁴

“Due process requires that parties receive fair notice before being deprived of property.” *General Electric Co. v. EPA*, 53 F.3d 1324, 1328 (D.C.Cir. 1995). The fair notice requirement, which “has now been thoroughly ‘incorporated into administrative law,” *id.* at 1329, quoting *Satellite Broadcasting Co v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987), has two distinct applications in this case. First, fair notice requires that the Commission’s *regulation* defining express advocacy must be sufficiently clear to “warn a party about what is expected of it.” *Id.* at 1328; *see also* *FEC v. Arlen Specter ‘96*, 150 F. Supp. 2d 797, 813 (E.D. Pa. 2001).²⁵ As we have shown in point I above, however, the second prong of the express advocacy definition is so vague that it does not put organizations and citizens on notice of what speech is prohibited. And the Commission’s continuing disagreement concerning the regulation’s meaning and effect until well after the 2004 election merely compounded the absence of fair notice. *See, e.g., General Electric Co.*, 53 F.3d at 1332 (ambiguity of standard demonstrated where “differing divisions of the enforcing agency disagree[d] about [its] meaning); *Rollins Environmental Servs., Inc. v. EPA*, 937 F.2d 649, 653 (D.C. Cir. 1991) (setting aside administrative penalty because “significant disagreement” remained within the agency about the meaning of the standard at issue); *Gates &*

²⁴ The Council for Responsible Government Remand case (MUR 5024R) was the first enforcement action since MUR 5154 of which Sierra Club is aware in which the Commission voted to find express advocacy under the second prong of the definition. In three other cases made public earlier in 2005, the General Counsel cited to (but did not recommend a finding of express advocacy) under the second prong, and the Commission voted against finding express advocacy. Since no Statements of Reasons were issued by the controlling groups, it left uncertain whether or not some of the former controlling group of Commissioners had changed their positions. *See* MURs 5381, 5468R, 5474/5539.

²⁵ The court in the Specter case acknowledged that the “fair notice” doctrine applies in FEC enforcement cases, although it found that the defendant in that case had received fair warning of the Commission’s enforcement position through a number of non-regulatory materials that existed at the time of the alleged violation. *See id.* at 813-814

Fox Co. v. OSHRC, 790 F.2d 154, 157 (D.C. Cir. 1986) (Scalia, J.) (finding that company was not adequately apprised of agency's interpretation of vague regulation by employee who could not provide "authoritative interpretation of the regulation.")

As a result of the Commission's action in the prior Sierra Club case, the organization was without fair notice throughout 2004 concerning the Commission's interpretation of express advocacy as applied to voter guides of the kind in issue in this proceeding. Having failed to enforce the second prong of the express advocacy definition in the Sierra Club case and other similar cases, the Commission could not decide to resuscitate that regulation until it gave fair notice that the second prong was again being enforced. Notice of this change in policy did not occur until long after the Sierra Club distributed the 2004 voter guide in issue here. Moreover, the Sierra Club was entitled to rely on the Commission's construction of the first, "magic words," prong as applied to the Sierra Club's 2000 voter guide until it received fair notice that the interpretation given by the Commission to the first prong in its earlier case was no longer applicable. In designing its 2004 voter guide, the organization attempted to conform to the views expressed by not only the controlling group, which found no violation of the first prong, but also the non-controlling group, which would have found a violation. If, contrary to our arguments in Point I, the Commission determines to adopt a different interpretation of its regulation, as a matter of administrative law and due process it may not apply that new interpretation to the Sierra Club's previous actions taken in good faith reliance on its earlier decision.

Respectfully submitted,



Michael B. Trister

B. Holly Schadler

Richard Thomas

LICHTMAN, TRISTER & ROSS, PLLC

1666 Connecticut Avenue, NW

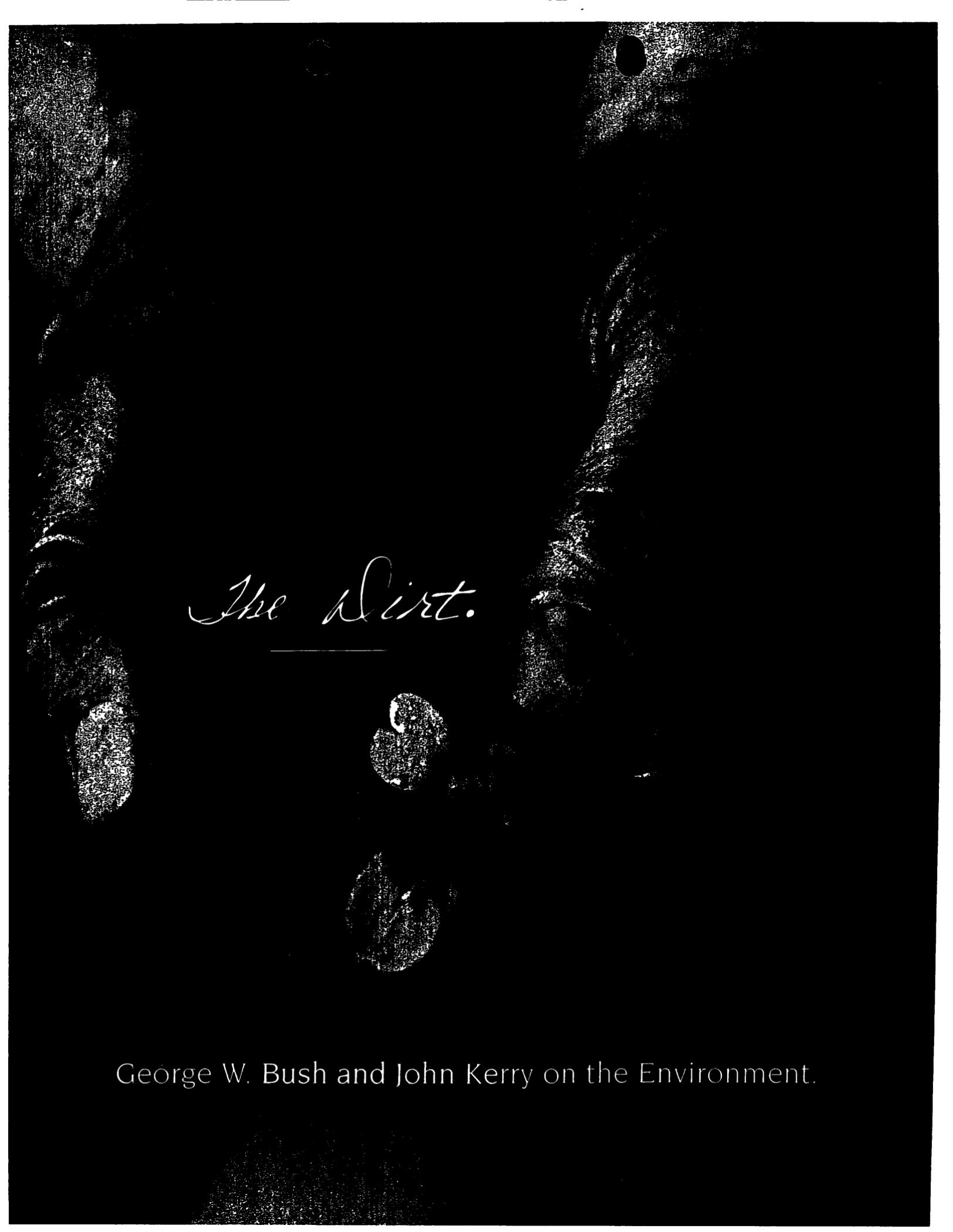
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January 31, 2006

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The Dirt.

George W. Bush and John Kerry on the Environment.

26044151032



George W.
Bush

Big deez



John Kerry

As President, George W. Bush has consistently chosen to protect the interests of his oil and gas industry campaign contributors at the expense of public health, the environment, and a safer and sensible energy policy.

Bush has proposed to allow “blended” sewage to be discharged into Florida lakes and streams,¹ eliminated the polluter pays laws which require corporations to fund the cleanup of abandoned toxic waste sites,² and opened the Gulf of Mexico to the first oil and gas drilling lease sale since 1988.³

Bush proposed drilling in the Arctic National Wildlife Refuge and other pristine public lands, but stifled efforts to develop renewable energy sources.⁴ In Florida, solar power is a great untapped source of renewable energy, and our tourism, economy, and coastal ecosystem depends on protection from off shore oil drilling.

Bush issued a rule requiring cleaner diesel fuel and engines for heavy equipment, starting in 2010. The rule will help reduce soot and smog pollution.⁵

At a glance

- Proposed allowing “blended” sewage into Florida’s lakes and streams
- Wants to open our national parks and shores for drilling across America
- Requiring cleaner diesel fuel and engines for heavy equipment, starting in 2010

CHECK THE FACTS:

- 1 Regulatory Review Plan 66, Federal Register 7701
- 2 “Bush, Kerry are Worlds Apart on Environment,” Gannett News Service, 5/28/04
- 3 www.gomr.mms.gov/homepg/lseale/181news.html
- 4 Report of the National Energy Policy Development Group, www.whitehouse.gov/energy/Chapter5.pdf
- 5 www.epa.gov/nonroad-diesel/2004fr/420f04029.htm

Sierra Club

for facts about the candidates for president.

John Kerry has built a 30-year record of supporting strong environmental protection. In the U.S. Senate, he has consistently fought for strong air and water pollution laws.

Kerry has voted in support of the polluter pays laws abandoned by the Bush administration and is committed to ensuring that corporate polluters have to clean up their wastes, not taxpayers. This includes Florida’s 51 toxic waste sites contaminating our groundwater and threatening our health.⁶

In the U.S. Senate, Kerry co-sponsored the Clean Power Act to force old, polluting power plants to clean up.⁷ One hundred percent of Florida’s waters are under fish consumption warnings due to dangerous levels of mercury pollution from coal-fired power plants.⁸

Kerry has offered an energy plan which would put the United States on a path toward independence from Middle-Eastern oil.⁹

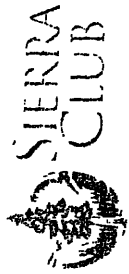
At a glance

- Committed to re-instating the polluter pays laws
- Fought to force polluting power plants to clean up their emissions
- Supports clean, renewable energy programs

CHECK THE FACTS:

- 6 www.epa.gov/superfund/sites/npl/fl.htm
- 7 S 366, 2/12/03
- 8 EPA Fact Sheet, National Listing of Fish Advisories, pg 4, www.epa.gov/waterscience/fish/advisories/factsheet.pdf
- 9 “Kerry vs Bush on Environmental Issues,” Scripps Howard News Service, 7/15/04

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From one friend of our
environment to another...

We invite you to take a fresh look at John Kerry's Environmental Record.

Throughout his career, John Kerry has repeatedly fought to clean up toxic waste sites, to keep our air and water clean, and to protect the Arctic National Wildlife Refuge and other pristine public lands.

- Advocated strict enforcement of the Clean Air Act and Clean Water Act, and opposed the current administration's efforts to weaken the laws that force power plants to install pollution-reducing technology, (*Senate Vote 343, 1995, Senate Vote 12, 2003*)
- Co-sponsored legislation that would hold polluting corporations, and not taxpayers, responsible for paying to clean up abandoned toxic waste sites, (*Senate Vote 97, 2003*)
- Led the fight to block the current administration's attempts to allow destructive oil and gas drilling in the Arctic National Wildlife Refuge; (*Senate Vote 71, 2002*)
- Champions an energy plan that would reduce the nation's dependence on Middle-Eastern oil by developing renewable fuels and other clean energy technologies, ("*Kerry vs Bush on Environmental Issues*," *Scripps Howard News Service, July 15, 2004*)
- Advocated for and helped negotiate the Kyoto Protocol, the first international treaty aimed at cutting global warming pollution and reducing greenhouse gasses. ("*No Longer in Dispute*," *Hartford Courant, November 22, 2000*)

Putting people before corporate polluters.

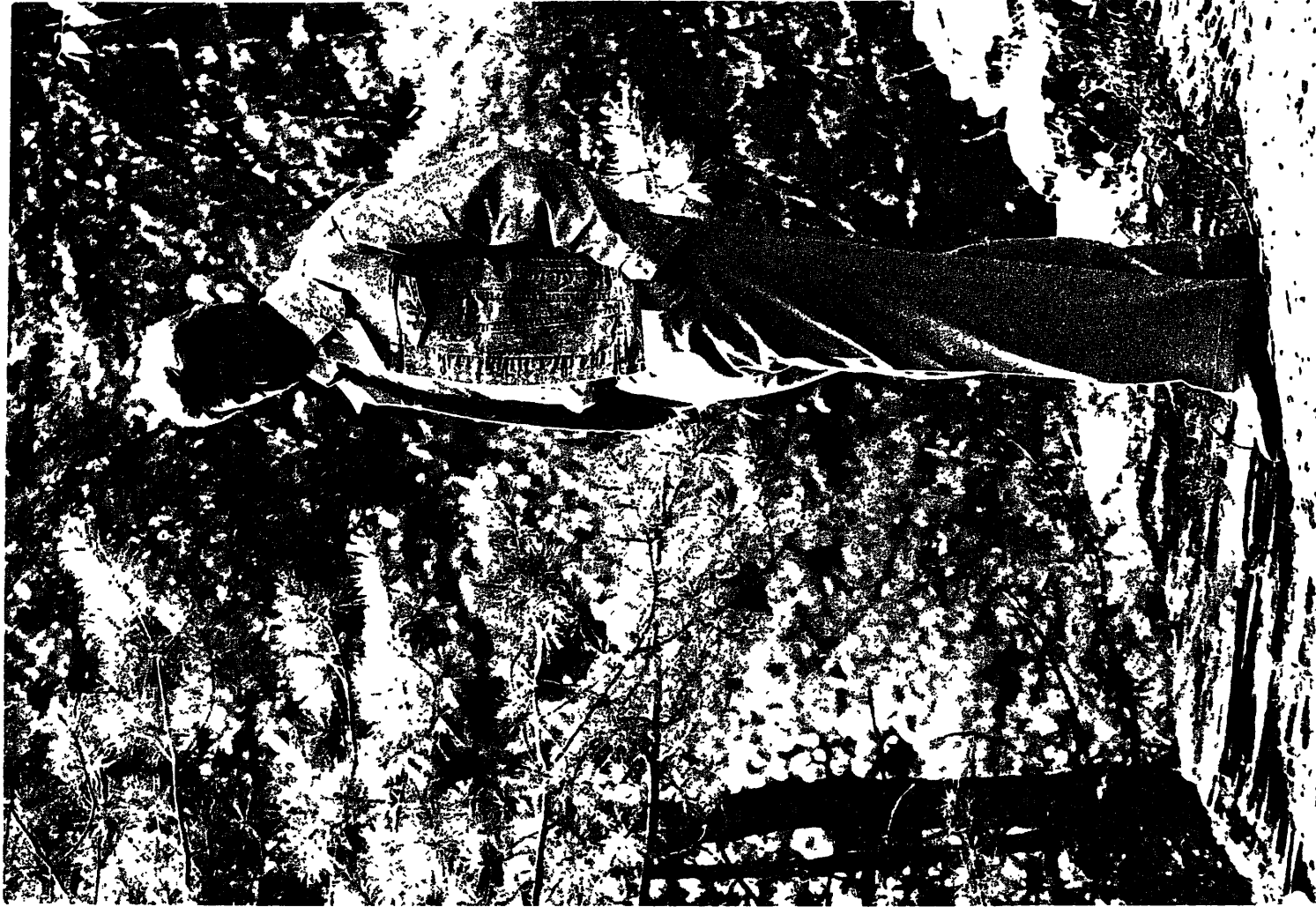
E-mail Senator Kerry at John_Kerry@kerry.senate.gov and ask him to continue protecting our environment by:

- Continuing to put taxpayers, not polluters, first
- Continuing the fight to get mercury out of our lakes, streams and fish

THE JOHN KERRY ENVIRONMENTAL RECORD

Take a closer look.

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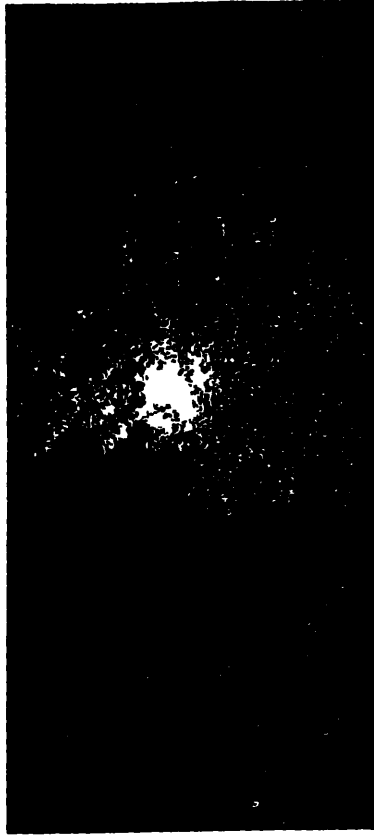
The Environment FOR DUMMIES



One Earth. One Sky

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President Bush could halt and even reverse air and water pollution — if he wanted to.

Of course, it's not all his fault. But President Bush has the power to make significant changes in the quality of our air and water. The technology to remove mercury from the toxic smoke belched by power plants exists — but President Bush won't make them use it. This single act of leadership would have removed millions of tons of mercury from America's air and water. And it won't happen.

This year, our vision counts.

This year, our vision of America has a chance to be defended against pollution and exploitation. America can once again share in clean water, fresh air, and her unique natural beauty.

Email President Bush at president@whitehouse.gov.

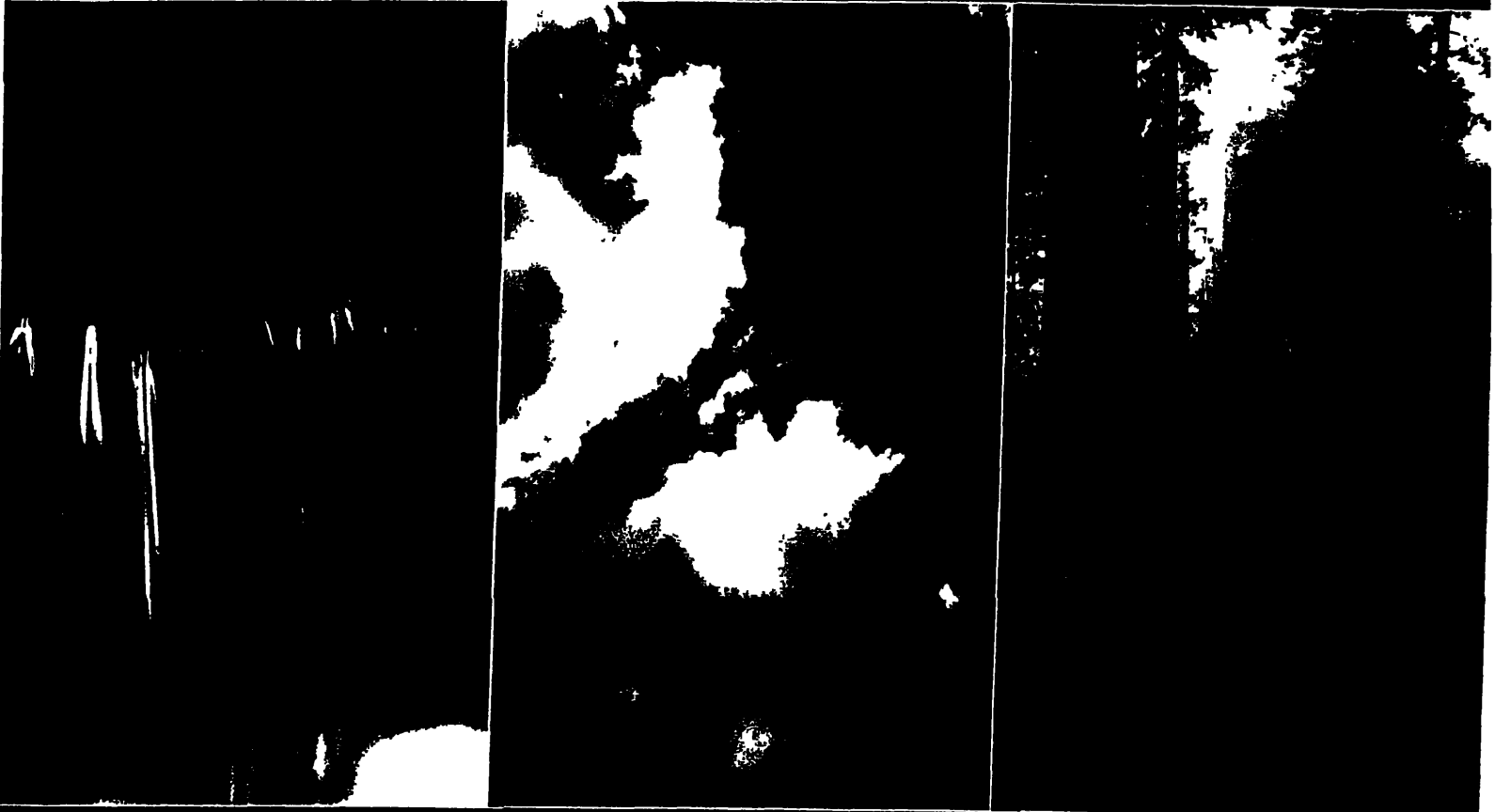
Tell him to stand up to corporate polluters.



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It's in OUR hands

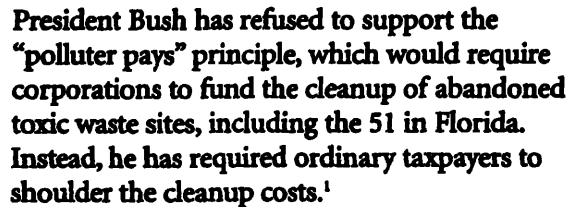


LET YOUR
CONSCIENCE
BE YOUR GUIDE.

It's about power – and you have more than you think

John Kerry

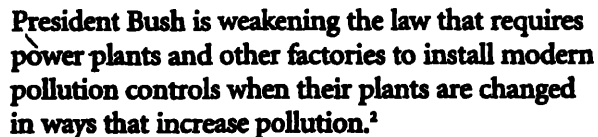
Toxic Waste Cleanup



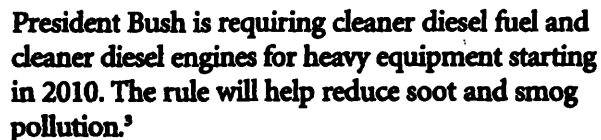
Senator John Kerry has been a leader on cleaning up toxic waste sites. Senator Kerry co-sponsored legislation that would take the burden off taxpayers and hold polluting companies responsible for paying to clean up abandoned toxic waste sites.⁶



Clean Air



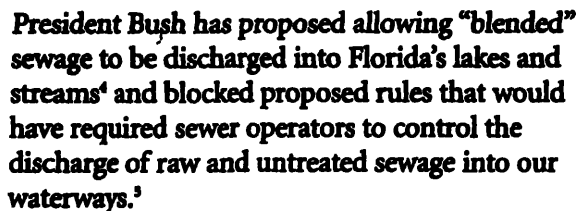
Senator Kerry supported an amendment that would block President Bush's change to weaken the Clean Air Act.'



Senator Kerry was an original co-sponsor of the Clean Power Act, which would force old, polluting power plants to clean up.⁴



Clean Water



Senator Kerry has repeatedly advocated for increased enforcement of existing clean water laws⁹ and voted to eliminate taxpayer subsidies to corporate farms that pollute ground and surface water.¹⁰



Find out more at
Visit w

Check the Facts:

- 1 Superfund Program: Current Status Fiscal Challenges, GAO Report 03-850, pg. 3.
- 2 Federal Register, Volume 67, No. 251, 12/31/02.
- 3 www.epa.gov/nonroad-diesel/2004tr/420R04029.htm
- 4 Regulatory Review Plan 66, Federal Register 7701.
5. Federal Register, Volume 67, No. 251, 12/31/02.

6. S. 173; thomas.loc.gov/cgi-bin/bdqi
7. thomas.loc.gov/cgi-bin/bdquery/z?d
8. S. 366; thomas.loc.gov/cgi-bin/bdqi
9. www.senate.gov/legislative/LIS/roll
10. thomas.loc.gov/cgi-bin/bdquery/z?

YOUR VOICE.
you think.



Mel Martinez

Betty Castor



Toxic Waste Cleanup



No stance on record.

Castor supports reinstating the "polluter pays" principle to make corporate polluters, not U.S. taxpayers, pay to clean up abandoned toxic waste sites.¹¹



Clean Air



No stance on record.

Castor has pledged to address air pollution by placing caps on carbon dioxide, sulfur dioxide, nitrogen oxide, mercury and other dangerous emissions.¹²



Energy



Martinez supports the Energy Policy Act of 2003, which gave millions in subsidies to the oil and coal industries, but made minimal investments in clean alternative energy technologies.¹³

Supports a greater commitment to alternative energy, such as wind and solar power and greater use of "green" building practices.¹⁴



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Know Their Record on the Environment

Virginia Senate



SENATOR CHARLES ROBB
INCUMBENT

WHERE DO THEY STAND?

- ✓ SUPPORTS SIERRA CLUB POSITION
 ✗ OPPOSES SIERRA CLUB POSITION



GEORGE ALLEN
CANDIDATE FOR SENATE

<p>✓ Voted for the Clean Water Action Plan. The plan calls for a reduction in polluted runoff, the creation of buffer strips along two million miles of rivers and improved monitoring of major water pollutants. (<i>Amendment to S C R 86, 4/2/98</i>)</p> <p>Voted against rollbacks in clean water and against budget cuts that would have made it harder for the EPA to enforce environmental laws. The bill also contained a rider that would have prevented the EPA from regulating arsenic in drinking water and protecting wetlands. (<i>H R 2099, 9/27/95</i>)</p>	Clean Water	<p>✗ Cut funds for the Department of Environmental Quality, decimating water pollution programs. (<i>Richmond Times-Dispatch, 10/2/96, The Roanoke Times, 7/13/99</i>)</p> <p>Citing Virginia's failure to enforce the Clean Water Act, the EPA sued Smithfield Foods Inc. in August 1997, for clean water violations. Smithfield Foods donated \$125,000 to Gov. George Allen's political action committee in 1995. (<i>Richmond Times-Dispatch, 12/17/97</i>)</p> <p>The number of polluted rivers [in Virginia] "doubled" (EPA report) and officials under Gov. Allen "hid data" that could have identified corporations dumping toxic PCBs in state rivers. (<i>Associated Press, 5/22/00, Lynchburg News & Advance, 6/2/99</i>)</p>
<p>✓ Voted to strengthen enforcement of clean air standards. (<i>Amendment to H R 2099, 9/27/95</i>)</p>	Clean Air	<p>✗ Produced first air pollution plan ever rejected by the Environmental Protection Agency. (<i>Richmond Times-Dispatch, 12/1/94</i>)</p>
<p>✓ Voted against an amendment that would have allowed states to build roads across national parks, monuments, and wildlife refuges. (<i>Amendment to S 672, 5/7/97</i>)</p>	Public Lands	<p>✓ Signed into law a bill that creates a Conservation Resource Fund, providing additional funding for conservation efforts in state parks. (<i>H B 713, 4/6/94</i>)</p>
<p>77% Lifetime average for pro-environmental voting in the U.S. Senate, 1989-1999. (<i>League of Conservation Voters' Scorecard</i>)</p>	Environmental Scores	<p>13.5% Lifetime average for pro-environmental voting in the U.S. House, 1991-1992. (<i>League of Conservation Voters' Scorecard</i>)</p>

**Sierra Club. Protect Virginia's Environment,
for our families, for our future.**

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